

## **Minutes**

### **Amherst Charter Commission meeting of November 3, 2016**

Members Present: Tom Fricke, Meg Gage, Nick Grabbe, Mandi Jo Hanneke (acting chair), Julia Rueschemeyer, Irv Rhodes, Diana Stein, Gerry Weiss. Member Absent: Andy Churchill. Consultants Present: Michael Ward and Tanya Stepasiuk. Presenters: Select Board members Doug Slaughter, Jim Wald, Connie Kruger, Alisa Brewer and Andy Steinberg. In attendance: Ted Parker, Irma Gonzalez, Maurianne Adams, Larry Kelley, Walter Wolnik, Kevin Collins.

#### **Agenda:**

1. Call to order, approve agenda, approve minutes (5 minutes)
2. Select Board members' input (60 minutes)
3. Member updates (10 minutes)
4. Citizen Relief/Participation functions and options (30 minutes)
5. Executive functions and options (30 minutes)
6. Legislative functions and options (30 minutes)
7. Public comment (10 minutes)
8. Confirming schedule for future meetings (5 minutes)
9. Topics not reasonably anticipated by the Chair 48 hours prior to the meeting
10. Adjourn

The meeting was called to order at 6:20pm at the Amherst Police Station Community Room. Due to a misunderstanding, the first 45 minutes of the meeting were not videotaped. The taping began in the middle of Wald's remarks.

#### **SELECT BOARD PRESENTATION**

**Slaughter:** It's essential to have a manager to provide expertise that a mayor might not have and to prevent undue political influence. The government is complex and it's difficult to make it function well in large groups such as Town Meeting, as many members lack the mastery of information and understanding of the process to make good, timely decisions. Zoning and development are challenging, in part because grants don't fit in with the Town Meeting cycle.

**Kruger:** The Select Board works well, with members showing respect for each other, but depends heavily on the manager and staff. A manager is the best choice. The town and Town Meeting are polarized, and it troubles her that some members distrust the professional staff and boards, and this has gotten in the way of making the best decisions. There's been suspicion, especially on planning and land use, that is uncalled for.

**Kruger:** Some Town Meeting members are well prepared to debate and vote on the budget, but others use it to make an end run around the budget-building process and make emotional appeals while not comparing that choice to other things we need. Town Meeting is not representative of the town, with empty-nesters and retirees over-represented, though that might be true on a council, too. There's too much acrimony and incivility, such as in the debate about the Jones Library expansion last spring, and it's a deterrent to public participation.

**Kruger:** The board is finishing up budget policy guidelines for the manager now. Some people don't feel included in the process, but committee meetings are open to the public. Town Meeting is a "clunky" place to change the budget, and if you pull a thread out, the broad mosaic can be lost. The conundrum is this: What's the point of having Town Meeting vote on the budget?

**Wald:** Amherst's government is excellent by most standards, and is known for being well-run. The manager provides continuity and is above politics, and mayoral candidates could be unqualified for the requirements of the job. John Musante was great on finances and gave presentations to other towns on the subject. The charter process is essentially a referendum on Town Meeting, which I have mixed feelings about; "sometimes I feel inspired and some days I despair, but I try to keep an open mind." Michael Cann, a refugee from Nazism, reminds us that you don't appreciate democracy until it's gone, and public participation is good in its own right for all the frustration, while Stephanie O'Keeffe reminds us of the problem of the manager having authority but not accountability.

There's a delicate balance: Town Meeting shouldn't be a rubber stamp, but if members pick out one thing to revise and don't understand the process, it's a problem. It's a "sick system" if Town Meeting doesn't trust the Select Board or professional staff, and there have been implications of collusion or financial malfeasance and conspiracy. "Why would we want to serve and subject ourselves to that kind of abuse?" I'll miss Town Meeting if it's gone, and a council might produce the same factionalization. "We could have the same gridlock with 13 as with 240."

(At this point in the meeting, the videotaping began.)

Grabbe said that having a clear and forceful voice speaking on the town's behalf to state and campus officials has been identified as an important value, and asked how this would be achieved in a manager/council form of government. Wald said the manager could be the public face of the town, while Brewer said the council president could be that voice.

**Brewer:** Town Meeting was a great learning experience for me, but I was perplexed when I found there were no precinct meetings. Later, I realized that I was lucky to be a white person living on a spouse's salary, and Town Meeting is not accessible to the average person. Town Meeting does have some fine qualities, though, and I opposed the previous Charter Commission proposal that would have eliminated it.

But now I'm concerned that Town Meeting members are "self-selected," business owners are not getting engaged, and "the same people are making the same complaints over and over." I'd like to see how the whole process could be made more engaging. "I'm curious to see what you come up with." I want to say to some people, "Run against me or stop talking; you're not in this seat." I want to hear from a wide variety of people, and earlier in the budget process, not just the "usual suspects."

Rueschemeyer asked if a council chair could provide political leadership, and why the Select Board chair can't do that.

**Brewer:** It's a different role. With a council of nine to 15 members, it could make decisions about the budget and zoning. I feel our system is more akin to some councils than to small select boards in small towns without a manager. "The reality is that the manager makes all the decisions. I can't do things if Town Meeting doesn't give us the money. The manager has all the power." The good relations among Select Board members are not matched by the School Committee, but at some points board members have had different goals.

**Steinberg:** The Select Board assigns members to represent the town in certain areas, such as the PVTA and the regional school assessments. It also oversees the manager-who they had to hire-, and is working on the mechanics of having the new manager's tenure be effective. Town Meeting re-inserting money for school library assistants was frustrating, with a small community manipulating the process. The percent of budget items that are challenged at Town Meeting is not great. Barry Del Castillo was trusted when he served as Town Manager. We're at a low point of civility and trust, with tensions on zoning, development and protecting neighborhoods. Town Meeting consumes a lot of time and money. We need closure on

issues, such as the traffic circle at the north end of Kendrick Park. Now, instead, there is a petition article on it.

As a response to Mr. Steinberg's comment on closure, such as the Kendrick Park traffic circle, Weiss commented that sometimes closure doesn't happen because people don't feel that their comments and concerns are incorporated into planning. He went on to say that giving people a chance to comment at a public hearing followed by no changes in a plan does not constitute citizen involvement.

Gage asked about the solution to these toxic attitudes. Is it lack of adequate communication? Is it just a few personalities? People with too much time on their hands? As the executive director of a nonprofit, I had a strategic plan and goals, and the board of directors kept out of her way, and it was my fault if things went bad. Why isn't the manager more like a nonprofit director?

Steinberg said the Select Board also heard about the lack of internal communication and noted that Peter Hechenbleikner instituted weekly newsletters that were helpful to staff about what all parts of Town government were doing. But a political body is accountable to the entire electorate. Kruger noted that board meetings are on television.

**Rhodes:** Town Meeting is like 240 cooks preparing a meal. With citizen petitions, whatever comes up is fair game and people can weigh in, but it has to end at some point. After a Town Meeting session, I want to get a stiff drink because it's so "nerve-wracking."

**Weiss:** It's not just citizen participation, it's citizen power, and having an advisory Town Meeting would not be the same. For example, during some hearings, DAAC made suggestions about having raised crosswalks and lighting that would help the disabled and they were ignored.

**Wald:** I have experience with traffic circles at Atkins Corner and the northern part of the UMass campus on North Pleasant Street. Some of the comments on the one proposed near Kendrick Park have been uninformed from people who haven't been paying attention. Some comments on pedestrians and bicycles have ignored the fact that this was not an arbitrary decision, but based on expert studies and statistics.

## MEMBER UPDATES

Stein said that the town census goes out at the end of January or beginning of February, if the commission wants to include a survey in it. Gage said she's heard comments that the questions at the listening workshops have been too general. Rueschemeyer said the next one is Nov. 9 at the Survival Center at 6:30.

Grabbe said that as the commission starts deliberating, it's useful to have some historical perspective. He noted that Representative Town Meeting was approved by voters in 1938 two years after it was narrowly rejected, though in each case it received 44 percent of the vote, the difference in 1938 being the 18 percent abstentions. Arguments for it included that it would cause more voters to participate, would achieve economies, stabilize expenditures and slow the escalating tax rate, though none of these benefits came to pass.

He placed on the whiteboard at the front of the room the following information: in 1938, the Amherst population was about 6,000, compared to 38,919 now. The annual budget was \$574,000, compared to \$67 million now. In 1938, the average number of hours that annual Town Meeting took was five before the vote on a new form of government, three afterwards. The average for the last ten years is 21.7 hours. The average voter participation in the 12 years before 1938 was 46.7 percent; in the 12 years afterwards, it was 26.6 percent. For the last 10 years, it has averaged 15.5%.

Grabbe also compared the 1970s, which was halfway between 1938 and the present, to the last 10 years, expanding on data collected by the last charter commission. The average percentage of Town Meeting candidates who are elected has increased from 71 to 83%. The average percentage of successful candidates receiving 100 or more votes has declined from 96% to 52%. The average number of articles per Town Meeting session has declined from 17.5 to 4.2. The average turnout in the '70s was 29%, and has been plummeting in the last five years.

Gage noted that the dollar figures were not in constant dollars and, after doing calculations on her phone, said that the \$574,000 budget in 1938 would be the same as \$9.8 million in current dollars. Stein said much of the enormous increase in population since 1938 is attributable to students.

## **CITIZEN RELIEF**

Stepasiuk went over the procedures for free petition, initiative, referendum and recall. **Free petition** allows an individual or group to present a measure to the legislative body or School Committee for action, but is non-binding. An **initiative** allows a certain number or percentage of voters, by signing a petition, to require the legislative body or School Committee to take action. A **referendum** is the opposite, in that it allows voters to petition for the repeal of a measure enacted by the legislative body, or require that a certain legislative body action be affirmed by the voters on the ballot, while the action is put on hold. A **recall** allows voters to consider the removal of an elected official from office prior to the completion of a term. The other option is a non-binding **public opinion advisory question**.

Stepasiuk said that many towns have both free petition and initiative. Hanneke asked if a free petition is like a bylaw, and Stepasiuk responded that any power the legislative body has could be initiated by an individual or a group. An initiative is an “end run” around the legislature if it is unwilling to act.

The key question on these measures for the commission is the thresholds for activating these measures. Rhodes expressed worry that signature requirements that were too easy “would burn the house down.” Ward said the goal is to make these citizen relief measures “doable but not so easy you get 1,000 of them,” or “hard but not impossible.” If you go one way, no one ever achieves relief; if you go the other way, nothing is ever closed. Stepasiuk said there's usually a time period involved. She said the commission could cap the number of initiatives on a single topic.

Ward said he will present language that's been legally vetted and examples of what other towns have done, such as requiring signatures from 20 percent of registered voters. Stein said a percentage could cause the process to be skewed in Amherst because of all the students, and would prefer an absolute number. She noted that Town Meeting petitions need only 10 signatures to get on the warrant in the spring—and we get more petitions but 100 signatures are needed for petition articles for the fall Town Meeting; thus we get fewer of them. She also said Northampton requires 250 signatures and the process is seldom used.

## **EXECUTIVE FUNCTIONS AND OPTIONS**

Ward reviewed the typical powers and duties: **General:** setting policy direction, oversight of future direction, oversight of day-to-day operations, management of relationship with state and local agencies and the public, ability to restructure; **Personnel:** appointment authority, often shared with the legislature, personnel management, labor negotiations; **Financial:** budget development, management, purchasing; **Legal:** enforcement of charter and bylaws, upholding of federal, state and local laws, execution of contracts, quasi-judicial functions, often shared with legislature, such as permits and licenses, management of records; **Health, safety and welfare:** oversight of police, fire, public works, oversight of property and facilities.

Ward said there are different levels of detail in different charters, and the executive functions in many are left general; in council/manager forms there's usually deeper detail. Weiss asked about the range of powers in Select Boards (weak vs strong), noting that Amherst's has little of the enumerated powers.

Ward said the majority of mayors have two-year terms, but the trend is to have them be longer. Gage asked how a town can build in time to plan ahead when there's a two-year term. "That's a question you'll be grappling with," said Stepasiuk. Gage said sometimes it may be smart to do something to make the town better in 20 years even if it is not popular in the short term. Ward said some mayors are frustrated not being able to plan for the long term, whereas managers provide more continuity. Stepasiuk noted that Select Boards could delegate powers to Town Managers; also that East Longmeadow had a council/manager form of government.

## LEGISLATIVE FUNCTIONS

According to state law, a legislative body "is empowered to enact ordinances or bylaws, adopt an annual budget and other spending authorizations, loan orders, bond authorizations and other financial matters." In addition, a legislature typically approves local acceptances; enacts resolutions; and in city forms, approves property tax classification, acts as the licensing authority, makes appointments, confirms appointments to the executive, has inquiry and investigatory authority, and sets its own agenda.

Stepasiuk asked how Amherst Town Meeting works. **Hanneke:** There's a gap between how people think Town Meeting should operate as a legislature and how it actually acts. People think a legislature generates laws, and committees debate them before bringing them to the whole body for a debate and vote. For example, Town Meeting has no authority to create a warrant article, but if an article comes up, it doesn't adjourn until it's voted on. There's no opportunity to table it for a week after an amendment has been proposed, and can only be referred back to a committee, which sends it "down the void." Can there be Town Meeting subcommittees? Do zoning changes have to come from the Planning Board?

Weiss said that the commission could write anything into the charter to give Town Meeting more power, so could it allow a subcommittee to create articles? Ward said a Representative Town Meeting could be as small as 50 members, but you could have a 50-member council, so what's the difference? Town Meeting has an agenda that's set by the moderator, so "my gut is no," Ward said. Rhodes asked what is to prevent Town Meeting from producing a warrant article and presenting it to the Select Board? Ward said, "Nothing."

Weiss said that there should be a way to table an article once an amendment is made, especially with complex zoning issues, and the moderator has researched this and said it would have to be put in the charter. Hanneke said it's hard to have a zoning amendment and have to vote on it the same night it's proposed.

Gage asked how much Town Meeting can delegate to a committee. She noted that the Town Meeting Coordinating Committee is working on proposals to make meetings run better. Stepasiuk said she'll look at other towns and what they do.

Fricke said a recurring challenge is that Town Meeting meets only twice a year for about 12 days, and asked if that's necessary. Could it meet once a month? Ward said the only requirement is that annual Town Meeting be in the spring. Hanneke said a council could add or subtract items from its agenda by the week, while with Town Meeting there are strict notice requirements and that is a constraint. Keeping

Town Meeting open for ongoing business won't work because Town Meeting has to be dissolved for its votes to become effective. Ward said, "It's starting to sound like a council with 240 members."

Weiss said there's been a suggestion to separate zoning into its own session, as these articles occur late in the warrant, when members are tired. Gage said it should be hard to change zoning, which is one tool citizens have in a capitalistic system to have an input on land use. Stein asked about proposed legislation to make zoning changes easier to pass, and Ward said it has passed the state Senate but not the House.

Ward said that Dracut has an open Town Meeting, one of the largest in the state with this form, and spring is the session for the budget and fall for zoning. It sometimes has difficulty achieving a quorum, the minimum number of participants necessary to conduct business, a number set by individual towns. Hanneke cited a Vermont professor who has done research on open Town Meetings.

Gage said that some things that Town Meeting does a manager could do.

## **PUBLIC COMMENT**

**Maurianne Adams:** Why does Town Meeting get so unpleasant while debating zoning? The current procedure is faulty, because the Planning Board operates on its own, with the manager appointing members but not going to the meetings, and the board made up its mind what it wants before there's an open hearing. But this is changing because of new leadership and changes in the Planning Department. The town is grappling with issues involving neighborhoods, development and economic development, and these are the most divisive issues in town. It is potentially negotiable, though there's no structure to deal with it, and no clarity between the executive and legislative branches. The Town Meeting Coordinating Committee is looking at potential changes, such as making it smaller, or meeting more frequently, or having more focused agendas, or changes in precinct lines, as students living in dormitories must be factored into the lines but have little interest in local issues.

Rueschemeyer said the commission should get on the TMCC's agenda. She asked if managers ever sit on the Planning Board or School Committee, and Stepasiuk said they don't, but are sometimes ex officio members.

## **SCHEDULE OF FUTURE MEETINGS**

The next meetings are Nov. 7 at 7 p.m. and Nov. 14 at 6pm, before Town Meeting. Other possible meeting dates are Dec. 19, 21, and 22, and she will send around a Doodle poll.

The meeting was adjourned at 9:30 p.m.

Respectfully Submitted,  
Nick Grabbe, Clerk

## **Documents:**

- Citizen Participation Mechanisms in Massachusetts Charters
- Municipal Executive Functions in Massachusetts
- Municipal Legislative Functions in Massachusetts
- Amherst Regional School Committee Graphic